DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 5550-97
29 October 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: FORMER [redacted]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Cardiology Advisor ltr of 11 Mar 99
(3) Director, NCPB ltr of 29 Jul 99
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was retired by reason of physical disability.

2. The Board, consisting of Ms. Humberd and Messrs. Ensley and Ivins, reviewed Petitioner's allegations of error and injustice on 7 October 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy on 26 January 1987. On 14 May 1993, he was given a diagnosis of adjustment disorder with mixed features, but found fit for duty. On 22 July 1993, he was given a diagnosis of dysthymia, in partial remission. He underwent a pre-separation physical examination on 1 February 1994, and was found physically qualified to perform the duties of his rate. He completed a Standard Forms 93, Report of Medical History, in connection with the physical examination, in which he stated that his health was good, and denied a history of heart trouble, shortness of breath, pain or pressure in chest, palpitation or pounding heart, frequent trouble sleeping, depression or excess worry, and

nervous trouble of any sort. He was honorably released from active duty on 25 February 1994 and transferred to the Naval Reserve. He underwent a Naval Reserve affiliation physical examination on 13 March 1994, and was found physically qualified. He submitted a claim for disability benefits to the Department of Veterans Affairs on 18 January 1995, and was awarded a 10% rating for a right knee condition. His request for service connection for a left knee condition was denied. On 14 January 1997, the Department of Veterans Affairs (VA) awarded him a disability rating of 100% for residuals of the heart transplantation he underwent during December 1995. Service connection was granted based on the findings of a VA cardiologist that Petitioner's heart condition manifested itself within one year of his release from active duty, and that there is evidence suggestive of a cardiac abnormality which was missed on examinations in 1991 and 1994.

d. In correspondence attached as enclosure (2), the Specialty Advisor for Cardiology advised the Board, in effect, that Petitioner had an abnormal electrocardiogram (EKG) on 16 December 1991 which was incorrectly interpreted as "normal". A second EKG, which he underwent on 13 March 1994 as part of his Naval Reserve affiliation examination, was also abnormal but erroneously classified as within normal limits. There are no entries in the health record from the medical department of the US Embassy, London, to confirm his report that he complained of shortness of breath and was told it was due to smoking There is a health record entry dated 8 August 1993 (actually 8 November 1993) recommending against running and climbing stairs, and advising him to utilize the swim/bike portion of the physical readiness test (to minimize symptoms of a right knee condition). He had a grossly abnormal EKG on 21 September 1995. A hospital discharge summary covering the 30 November-31 December 1995 period indicates that he was diagnosed as having idiopathic dilated cardiomyopathy in September 1995, and that he had complained at that time of a three month history of shortness of breath on exertion. The Specialty Advisor noted that the decline in physical conditioning reported by Petitioner's transplant cardiologist is not documented in available evidence, but it is not "questioned as being true." The Specialty Advisor concluded that Petitioner had no complaints or physical findings of an idiopathic dilated cardiomyopathy while on active duty or when ransferred to the Naval Reserve in March 1994. Without the two abnormal EKGs noted above, he would be not be able to support Petitioner's claim that his condition occurred while he was on active duty; however, the two abnormal EKGs likely represent "...a clue to the beginning of a cardiac abnormality which was acutely exacerbated in the summer of 1995." The Specialty Advisor believes that further evaluation by a specialist to clarify the significance of the EKG abnormalities would have been indicated had Petitioner's EKG results been correctly interpreted while he was on active duty. He supports Petitioner's contention that further evaluation during February/March 1994 may have identified early findings of cardiomyopathy and resulted in referral to the CPEB and a determination in favor of medical separation with a disability rating.

e. In correspondence attached as enclosure (3), the Board was advised by the Director, Naval Council of Personnel Boards, in effect, that he has determined that "Petitioner was not "UNFIT" at the time of his release from active duty and does not rate a medical retirement." In his opinion, Petitioner's EKG abnormalities, which were wrongly interpreted as normal while Petitioner was on active duty, may be presumed to represent the active duty

manifestations of an early, presumably smoldering, latent, asymptomatic cardiomyopathy. Petitioner's functional compromise while on active duty was limited to an undocumented physical readiness test (PRT) performance decline, although not to the point of failure, and a reported PRT waiver due to smoking. Clinically alerting symptoms of cardiomyopathy did not appear for more than eighteen months after Petitioner's apparently voluntarily release from active duty. Had medical authorities interpreted Petitioner's 1991 and 1994 EKGs correctly, further testing and medical therapy would have been initiated. It is unlikely that a medical board would have referred the case to the Physical Evaluation Board, however, because his condition was asymptomatic, and he would have been considered fit for duty. The Director noted that the condition is clearly "service connected", and warrants a VA rating; however, the mere presence of a clinical manifestation for which a rating exists or can be found in the VA schedule for rating disabilities does not necessarily translate into a finding unfitness for that condition. In his opinion, "there is a lack of documentation that any significant deterioration occurred in Petitioner's condition in sufficient proximity to his release from active duty to support a finding of unfitness."

f. Petitioner contends, in effect, that he suffered from congestive heart failure prior to his release from active duty, which should have been diagnosed and treated at that time. He states that he complained of severely restricted breathing, reduced physical capacity, and occasional swelling, but his symptoms were dismissed as being related to smoking, and he was denied a more thorough examination. Although he "seriously reduced" his smoking, his symptoms persisted and worsened, and "not being a trained physician, I accepted this "diagnosis"and was encouraged that the symptoms were not a factor upon separation." In a statement attached to the application, Petitioner's wife corroborates his contentions. She reports that Petitioner complained of exhaustion and fatigue, and had difficulty completing chores such as lawn mowing. He was told on more than one occasion by U.S. Embassy medical personnel that there was nothing wrong with him, and they suggested he take a smoking cessation class. They trusted that advice, and were not aware that heart failure was a possibility in someone so young. Petitioner has submitted statements from several physicians who are of the opinion that he suffered from a symptomatic heart condition existed while he was on active duty in the Navy.

CONCLUSION:

Upon review and consideration of all the evidence of record and notwithstanding the comments contained in enclosure (3), the Board concludes that material error and in justice occurred in Petitioner's case. In this regard, it substantially concurs with the comments contained in enclosure (2).

Although the available records do not substantiate Petitioner's contentions that he suffered from disabling symptoms of heart disease prior to his release from active duty in 1994, the records do support a finding that the disease process existed at that time, and that it should have been diagnosed and treated. Had treatment been initiated during the 1991-1994 period, the course of the disease might have been altered, and resulted in a much more favorable long-term prognosis. In view of the foregoing, and given the severe, life-long residual effects of a heart transplantation, it would be in the interest of justice to grant the following

corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 24 February 1995, while he was entitled to receive basic pay, the Secretary of the Navy found him unfit to perform the duties of his rate by reason of physical disability due to idiopathic dilated cardiomyopathy, which was incurred while Petitioner was entitled to receive basic pay; that the disability is not due to intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; that the disability was incurred in the line of duty; that the disability is considered to be ratable at 30% in accordance with the Standard Schedule for Rating Disabilities in use by the Veterans Administration at the time the Secretary found Petitioner unfit, Code Number 7099-7000; and that accepted medical principles indicate the disability may be of a permanent nature, accordingly, the Secretary placed Petitioner's name on the Temporary Disability Retired List effective 26 February 1994 pursuant to 10 U.S. Code 1202.

b. That Petitioner be afforded a periodic physical examination as soon as practicable. Current address: 165 SW Lansdale Street, Oak Harbor, WA 98277.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

JAMES R. EXNICIOS
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

W. DEAN PFEIFFER
Executive Director

Reviewed and approved: DEC 17 1999

C. L. Tompkins

CHARLES L TOMPKINS
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PERSONNEL PROGRAMS)